2. Carriers (§ 254 (2)*)—Carriage of Passengers—Regulation.—A provision in a ticket, considered in its primary sense as evidence of the passenger's right to transportation that it should be good only on the day of sale, is, being a reasonable regulation of the carrier, valid, in the absence of governmental regulation or statute to the contrary.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 696, 699.]

3. Carriers (§ 253 (1)*)—Carriage of Passengers—Tickets.—Custom and usage have an important bearing on the question whether a ticket is some evidence of the passenger's right to ride or constitutes a contract between the parties.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 696.]

4. Carriers (§ 405 (3)*)—Carriage of Passengers—Baggage—Liability—Stipulations.—As a carrier is at common law liable as an insurer for baggage, it cannot by notice or ex parte regulation set forth in a ticket limit such liability where passenger did not assent.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 712.]

5. Appeal and Error (§ 1175 (3)*)—Determination.—Where a new trial could avail plaintiff nothing and judgment should, in the first instance, have been rendered for defendant, the court on appeal from a judgment for plaintiff will reverse the case without remand, rendering judgment for defendant.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 628, 632.]

Error to Circuit Court, Wise County.

Action by V. R. Rieley against the Louisville & Nashville Railroad Company. There was a judgment for plaintiff, and defendant brings error. Reversed.

Irvine & Stuart, of Big Stone Gap, for plaintiff in error.
C. R. McCorkle, of Wise, for defendant in error.

LYNCHBURG FOUNDRY CO. *v.* DALTON.

Sept. 20, 1917.

[93 S. E. 587.]

1. Appeal and Error (§ 522 (2)*)—Record—Demurrer to Evidence.—A demurrer to the evidence is as much a part of the record as any other pleading, and failure to certify it according to Act March 21, 1916 (Acts 1916, c. 406), abolishing bills of exception, does not prevent its consideration on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 509; 4 Va.-W. Va. Enc. Dig. 545.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

2. Trial (§ 156 (1)*)—Demurrers to Evidence.—Where defendant's demurrer to the evidence was overruled inconsistencies in the evidence must be resolved in favor of plaintiff, as they might have been so considered by the jury.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 533.]

3. Master and Servant (§ 141*)—Injuries to Servant—Rules of Business.—A master is not bound to publish general rules for the government of his servants in the use of simple machinery, where its use is open and obvious.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 685.]

4. Master and Servant (§ 245 (1)*)—Injuries to Servant—Obedience to Orders—Contributory Negligence.—While it is the primary duty of a servant to obey orders, and if injured in discharge of that duty, he may recover from the master unless the danger was so manifest that a reasonably prudent man would not have encountered it, the servant cannot recover where guilty of contributory negligence which rendered unavailing the master's orders.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 709.]

5. Master and Servant (§ 155 (1)*)—Injuries to Servant—Warning.—It is not the duty of a master to warn a servant of an open obvious danger which he knows, or could have known by the exercise of ordinary care.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 687.]

6. Master and Servant (§ 236 (11)*)—Injuries to Servant—Care.—Plaintiff, who was loading special pipe in a box car for that purpose, used a boom or crane equipped with two chains, each of which ended in a hook. Only one chain was needed in loading special pipe. It was the custom, when only one chain was necessary, to hang the other in a ring above. The hook on the unused chain struck against the car in which pipe was being loaded, and, being forced from the ring, fell, striking plaintiff's hands, who was grasping the pipe. Held, that though plaintiff was ordered to keep his hands on the pipe, nevertheless, as the danger of the hook being driven out of the ring if it was pointed toward the car in which the pipe was being loaded, was obvious, plaintiff cannot recover for his injuries, for it is a servant's duty to take ordinary care for his own safety, and his accident occurred because of his negligence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 705.]

7. Master and Servant (§ 216 (1)*)—Injuries to Servant—Fellow Servants.—A servant injured through the negligence of his fellow servants assumes the risk thereof.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 2.]

8. Master and Servant (§ 185 (25)*)—Injuries to Servant—"Vice Principal."—The duty of giving special orders necessary to the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

safety of servants is one of the nonassignable duties of the master, and a servant, while engaged in the performance of that duty, is a "vice principal."

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Vice Principal. 6 Va.-W. Va. Enc. Dig. 7.]

9. Master and Servant (§ 289 (21)*)—Injuries to Servant—Jury Question.—Where the danger to a servant was so open and obvious and his opportunity of knowledge so complete as to leave no doubt that he knew, or should have known, the question of his right to recover is one of law for the court.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 726.]

(*Additional Syllabus by Editor.*)

10. Appeal and Error—Disposition of Cause—Reversal—Entering Judgment.—Where the judgment of the trial court in overruling a demurrer to the evidence is reversed the appellate court will enter such judgment as the trial court should have entered, sustaining the demurrer to the evidence and dismissing the case.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 628, et seq.]

Error to Corporation Court of City of Radford.

Action by one Dalton against the Lynchburg Foundry Company. There was a judgment for plaintiff, and defendant brings error. Reversed.

Caskie & Caskie, of Lynchburg, for plaintiff in error.
H. C. Tyler, of East Radford, for defendant in error.

VIRGINIA IRON, COAL & COKE CO. *v.* PROPHET'S ADM'R.

Sept. 20, 1917.

[93 S. E. 590.]

1. Appeal and Error (§ 1002*)—Review—Verdict.—A verdict on conflicting evidence is conclusive on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

2. Master and Servant (§ 293 (16)*)—Injuries to Servant—Actions—Instructions.—In an action for damages for the death of an employee in a mine, who came in contact with a hanging electric wire, where the declaration charged it was the duty of the employer to use reasonable care to maintain the wire in a safe position and a breach of that duty, an instruction that it was the duty of the employer to use care commensurate with the danger to inspect and maintain the wire was justified, though there was no allegation to

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.